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A REPLY ON THE SUBJECT OF LEGAL EDUCATION.

In the June number of the Register appeared an article by Professor Rogers, criticising one which was published in the February number, to which it seems fitting a brief reply should be made. The Professor's article is replied to not because it is the only attack upon the positions maintained in the February article, for criticisms thereon have appeared in several quarters, but because it is a dignified, earnest argument and plea for those interests which the distinguished Professor represents, and for the cause to which he has devoted his time and abilities. Professor Rogers does not, like a writer in one of the minor legal journals, endeavor to build up a case by misquoting the article attacked, and by italicizing passages or words, not italicized in the original, discovering a sneer against a class of men, for whom the present writer has great respect and with some of whom his personal relations are of the pleasantest character. This is only mentioned because it has been insinuated in a certain journal that the present writer has intended to cast a slur upon the attainments of professors of the law schools, and while those who know him would be hardly silly enough to think that there lurked in his words any such innuendo, yet some persons coming by chance across the words, as quoted at second-hand and distorted, might regard them as having a meaning which, for the sake of such readers is emphatically disclaimed. It is unnecessary to make such a disclaimer to those who have read or

will read the February article itself. This together with the fact that by the omission of a material part of a sentence, the article has been misquoted in a manner slightly suggestive of the famous scriptural argument in favor of hasty suicide, constitutes the writer's apology for what would otherwise be a waste of time and space. We come now to a brief consideration of the Professor's article, its criticisms and positions.

On the threshold, it may be remarked that, as might be expected, there is a wide difference between the view naturally taken by a learned professor in a law school, whose time, when not engaged in the active duties of lecturing, is devoted to profound research and who, it may be said, with all respect, from habit of life and mind, comes to regard the ability to master the instruction given by a faculty as the test of a student's qualification as a lawyer, and that taken by the practicing lawyer, whose life is led in the court and in his office, and by whom the test of qualification is to be found in the answer to the question —is the student so far grounded in the fundamental principles of law and has he thought upon those principles to such an extent that when a question involving them arises in real life, he can promptly and correctly apply those principles and determine what is right, what is the law of the case? in other words—is the student so thoroughly imbued with the science of law, that he can use it in the art, or the practice, of law? The idol of the forum will intrude into almost every man's judgment, strive we never so hard to exorcise him—and this difference of view between Professor Rogers and the writer, the one looking at the subject professorially, the other as a practicing lawyer who hopes nevertheless that he is not careless of the science of the law, and is most heartily desirous that it shall be thoroughly taught, may possibly account for some of the remarks and strictures which appear in the Professor's article.

The Professor seems to misunderstand the article he criticises; it is not a mere attack upon law schools. It deals with the relations of *courts* and law schools to legal education; and the remedy for the present state of affairs, for which the law schools are held to be in a great degree responsible, is distinctly pointed out to lie, in the first place, with the courts. The writer is far from being an enemy of law schools in their proper place and

doing their proper work; he regards them as most valuable and believes that they should be encouraged and upheld; and when Professor Rogers says, "It is the impression of the writer that a law school is on the whole a pretty poor place for one who really wants to know the law," if he, by "a law school," means a law school in the abstract, he misapprehends the writer's meaning, which is that the knowledge of law acquired in a law school as generally conducted at present in the United States, where the system of instruction is purely in classes, where as a rule there is no entrance examination and where the course is too short to permit of full, systematic, scientific instruction, is inferior to that which was obtained under the old system, where the preceptor was a learned and conscientious man (and no other should ever dare to take students) who would not make a mere clerk of his student and who would give to him careful, individual instruction. A preceptor of that class frequently sent his pupils to attend law lectures and they reaped in many cases great benefit from them, but the charge of their education, in the full sense of the building up of the student into a lawyer, rested upon the preceptor. It will be observed that the writer admitted that there might be a law school, at present but an ideal one, so conducted as to be the very best means of instruction, and there is quoted against him, apparently to show that the law school now is the best means of instruction, the report of the Committee of the American Bar Association. Let us see, by a little further examination of that report, whether it fully accomplishes the work it is called into service to do. Taking up the report exactly where Professor Rogers's quotation from it stops, we read, "If then, the schools of law in America were what they ought to be, every advantage which is attainable would be offered by them. They would prepare the young men ambitious of a professional career, systematically and scientifically, and year after year add them in sufficient number to the ranks of the profession.

"Unfortunately, however, this is not the case. The Committee do not desire to discredit those seminaries of legal learning which have constantly striven for improvement and which in the face of many adverse obstacles, trials, and discouragements, have always endeavored to advance the standard of professional

studies and attainments. Let it be remembered to their honor, that there are such schools and let it be hoped that their example may serve to inspire others. It is only just to add here, that rare as didactic efficiency and ability in law lectures are well known to be, the United States are able to point to a number of such distinguished for the highest degree of success.

"But it is difficult to deny that there are American colleges not deserving of commendation. Institutions where the course is unjustifiably limited and circumscribed, where the term of study is evidently too brief for useful purposes; where students continue to be invited, when they are unfit by reason of deficient education and want of contact with liberal studies, to wrestle with the difficulties of the law; where, in a way unworthy of the cause of legal learning, a spirit of competition to attract greater numbers than are to be found in other establishments, is allowed to obtain control; where examinations which are such only in name, take the place of a searching scrutiny of the students' acquirements; where there are no exercises sufficiently serious to try and develop the abilities the student may have; and where degrees are thrown away on the undeserving and the ignorant." These sentences quoted, do not stand by themselves; the whole trend of the report is in the direction of the necessity of the improvement of law schools and recommends, *inter alia*, the placing of them under public authority, the extension of their courses and the lengthening of the term to three years. If the report is called as a witness for the law school of the present day, it certainly seems to leave on the mind an impression that at present the school's usefulness, and usefulness it undoubtedly has, is circumscribed, that it does not by itself, give a qualifying education.

On page 346, Professor Rogers charges that the writer labors under a serious misapprehension with reference to what legal education in England some years back was; now whether this be so or not, it hardly touches the matter under consideration, but it is hard to imagine that one educated lawyer should think another so ignorant of the history of the bar as not to know that the education in the Inns of Court (which, by the way, were law schools and at one time fulfilled their duty), had, in the last century, terribly fallen off and had not recovered its

position in the early part of this, or that he had not heard the old joke about eating the requisite number of dinners for a call. But can it be forgotten that in those degenerate times, when the Inn education was at the lowest, men who strove to master their profession in earnest, sought instruction in the offices or chambers of members of the bar, of special pleaders, or even of attorneys? Recall a few instances—Salkeld's office contained, at one time, Parker, afterwards Chief Baron, Jocelyn, afterwards Lord Chancellor of Ireland, Strange, afterwards Master of the Rolls, and the great Philip Yorke; Warren had as pupil Runnington—Runnington, Tidd—Tidd, Lyndhurst, Campbell, Denman and Cottenham—and, in 1847, Campbell speaking of Tidd says, "To the unspeakable advantage of having been three years his pupil, I chiefly attribute my success at the bar:" Campbell himself had as pupils, Dundas and Vaughan Williams; Lord Eldon was a pupil of the conveyancer Duane; Brougham and Parke (afterwards Lord Wensleydale) were pupils of Tindal, afterwards Chief Justice. So that we find office study not neglected, even in England, by men aspiring to be great lawyers. But this really does not touch the question before us and we have simply been led off by Professor Rogers into a pleasant little retrospect. The real misapprehension upon this part of the subject is with the Professor, for the education had in view in the former article was, plainly, not that given in England, but that given by an American lawyer of the old school to his pupils; what was said was, "It is not necessary * * * to go back to the days of laborious preparation of the old English bar, to the long apprenticeship of the Inns * * * or, indeed, to cross the water at all; any one educated in the office and under the preceptorship of a member of the bar of the old school, will without trouble, recognize the difference," etc. The question then is, are the young men who have come to the bar within the past fifteen or twenty years, having drawn their education principally, if not entirely, from law schools, better prepared lawyers than were those educated under the old system, in the office of a preceptor at a centre of legal education, some few years or so back of that time? Let any lawyer past fifty years of age answer the question.

Passing from this, we come to the character of the examination. Most people will agree that if it be desired to ascertain a man's general knowledge of a subject, the person who has taught him what he knows and who professes to have taught him the subject, is hardly the proper examiner. He will naturally examine the man to see if he knows what he has been taught, if he has been diligent, attentive; but in common fairness such an examiner cannot go beyond the range of what he has himself taught; it is therefore most important that the examiner should be not the teacher, but a fair-minded man, familiar with the subject of the examination. Most of us agree that the best board of examiners would be one appointed by the court of last resort to examine all applicants. But, take things as they are, which is the better test of a young man's fitness, the law school examination or that before a board appointed by the courts? One can speak best of that which he knows by experience; the writer in the time past was for some two years an examiner for the bar in Pennsylvania, he has also "assisted" by his presence at the examinations of one of our most prominent law schools, and he can unhesitatingly say that the bar examination is the better test of a young man's fitness for admission, because it is conducted by men qualified in the subjects upon which they examine, although presumably not so learned in special branches as the professors who teach such subjects, lawyers who have not instructed the candidate, who is therefore to them a total or comparative stranger (it being considered a breach of etiquette for a preceptor to take part in the examination of one of his own students), and who therefore inquire into the knowledge of the subject examined upon in a much broader way than they would otherwise be justified in doing. To prove his position that the law school standard is higher than that of the court, Professor Rogers says that "The Dean of the Law School of the University of Pennsylvania is authority for the statement that students who have only completed the junior year in that school do, not unfrequently, pass the bar association in the State of Pennsylvania." The writer has himself known of one or two cases of gentlemen who have passed the bar before receiving their degree, but does this prove or support Professor Rogers's position? Not at all. For the examiners are

not permitted to examine a candidate before he has passed two years in an office (a term longer than the general law school course) and further has accomplished the course of study prescribed by rule of court. Evidence of compliance with both of these requirements must be given before the examination can be even begun. If to the question, "Have you read the entire course laid down in the rules?" the answer is "No," the candidate is told to present himself for examination when he has finished the course. Therefore, when a gentleman passes the bar under the circumstances above mentioned, it shows that he has obtained his instruction elsewhere than at the law school, has taken a different course of instruction from that given therein, and that he is using the law school to complete and round out his professional education. The latter part of this remark will also apply to the statement that there are forty attorneys-at-law in the senior class of the Michigan University Law School. The statement, "that students who are not within a year of obtaining their diploma from the law schools, may frequently gain admission to the bar, in States where no prescribed period of study is required," proves nothing at all, unless to the statement it be added that the students have received no other instruction than that they have received at the law school, for mere absence of registration does not prove absence of office or chamber study. If the addition suggested be made and if the statement can then be still affirmed on a fact, it is thought that the particular courts, where such a pitiably low standard prevails, must be few in number and that they cannot be taken as representing the general standard required by the courts—although far be it from the writer to be understood as intimating that the court standard is sufficiently high.

Another "misapprehension" charged upon the writer, who, poor fellow, seems to be misapprehending all the time, is one which induced his statement that the law schools have shortened the period of studentship.

The writer is not prepared to deny that there may be places in which the term of studentship has been shortened and for which shortening no law school is responsible, but what he asserted, is strictly and precisely true, in at least one centre of legal education. Pardon, therefore, a little piece of local bar

history. In Pennsylvania, the rule of study, years and years ago, required a student to be registered by a practicing member of the bar for three years, or, if the student were over twenty-one years of age when registered, for two years, before he was entitled to be examined for admission to practice in the Common Pleas and District Courts. Two years after being admitted to one of these courts, he might be admitted, on motion, to practice in the Supreme Court. Some time after the re-establishment of the Law School of the University of Pennsylvania by Judge Sharswood (*præclarum et venerabile nomen*), the rules of court were so altered, that time spent in the law school was allowed to be taken as an equivalent of the same time spent in an office. Later the rules were altered again; the office registration was again required, but the Bachelor of Laws of the University was allowed to be admitted to the Supreme Court immediately upon admission in the court below. So the rules stood, until the late E. Coppée Mitchell became Dean of the Law School in 1873, shortly after which time, through his influence, the rules of court were so changed as to permit a Bachelor of Laws of the University to be admitted to the Common Pleas upon his diploma and registration, by the Dean, for one year. The Supreme Court abolished the right of the Bachelor to admission to the bar, without waiting his two years. The discrimination in the Common Pleas in favor of law school students appearing unjust, first one court and then another, and, finally, all cut down the general period of studentship to two years. The reduction of time being brought about, it will be seen, by the law school. So stood the rules here in February, 1888. Let us here joyfully record a hopeful sign of reviving interest in the maintenance of a higher standard in legal education, and give credit where it is due. Several years ago the sub-committee on the law department of the Alumni of the University of Pennsylvania made a report that the course in that department should be increased to three years; this report was adopted by the Central Committee, (a body resembling somewhat the Board of Overseers of Harvard) and was forwarded to the Trustees, with whom it slept. A few days ago, on June 4, 1888, the Common Pleas of Philadelphia altered the rules as to admission to the bar, fixed three years as the required term of study for all persons thereafter

registered, and suspended the privilege of the University of Pennsylvania Bachelors, until such time as that institution increased the length of its law course to three years. A decided and most proper step in the right direction, and it is only right to add that A. Sydney Biddle, Esq., the recently elected Professor of Practice, Pleading, and Evidence at Law and Criminal Law in the University, was one of the strongest advocates of the change. A year's experience in the school had shown Mr. Biddle, or confirmed him in his previons belief, that a two years' law school course was not a sufficient preparation for the bar. This action may be taken as illustrating the truth of the position assumed at the end of the February article, that the remedy for the present state of affairs in legal education, lay with the courts and law schools, and it will probably force the trustees of the University to follow the lead of the courts. In conclusion, the writer, who apologizes for taking up so much time and space but who felt that justice required that he should say something in reply, regards the following conclusions as not shaken by the attacks upon them:

(1) That adequate preparation for admission to practice, cannot be given in the ordinary two years' course at a law school.

(2) That nothing can take the place, in legal education, of a learned and conscientious preceptor, accustomed to dealing, in practice, with legal problems.

(3) That no student should be permitted to study law without showing an aptitude for the study, and possession of an education of a preparatory character, and that a law school or a preceptor, who permits a young man to begin the study of law under its or his auspices without such preparatory education, fails in duty to the public and is guilty of an unkindness to the young man.

(4) That the courts should require all students to undergo examinations, both preliminary and final, by boards appointed by the courts, and not allow the diploma of a law school to be sufficient evidence of fitness to practice.

In all that has been said, it is not meant that the law school is of no service to the profession, even now, but it is meant to say that the proper place of a law school in the present system of legal education, is as a place of higher education whither

students and young members of the bar may resort for instruction in those branches for which professors, devoting their time to deep study, are especially needed; and it may be also said, as was said in the February article, that a law school may be conceived, which will fulfill all the requirements of legal education, where the professors will be like the ideal preceptor, where constant exercises upon law and about law will be engaged in by the students under judicious direction, where comparative jurisprudence, legal history, as well as the more practical branches, will be thoroughly taught, where the legal classics will be reveled in by the student, so that he will go out from the academic walls a thoroughly equipped lawyer. Such a state of affairs may in time exist, but it does not exist at present; it cannot exist in a school wherein the course is *nominally* two years, *really* less. When the law schools of the country lengthen their courses to at least three years, we shall see and hail with delight such a step as an earnest of their desire to really elevate the standard of education of the bar and not merely cram a certain amount of teaching into the heads of young men, in the shortest practicable time.

HENRY BUDD.

THE TEACHING OF LAW BY THE CASE SYSTEM.

I HAVE read with much interest, in the February number of THE AMERICAN LAW REGISTER, Mr. Henry Budd's able article on legal education, and as a cure for some of the evils that he mentions, I should like to say something on the teaching of law by what is called the case system. This method has been adopted or is in process of adoption, at several institutions in the country; but it originated, I believe, at the Harvard Law School. It consists in dispensing with the regular reading of text-books and that solemn imparting of information usually known as lectures. For example, a student in an office reads in some book, or, if he is in an ordinary law school, a professor tells him, that fixtures are chattels or articles of a personal nature attached in some way to the land, and which may or may not be removed, and so on. Under the case system, he is seldom favored with such direct information. The professor at the end of his hour with the class gives them a list of cases